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DAMAGE CLAIMS FOR IMPROPER PRISON CONDITIONS: THE JURISPRUDENCE OF THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA FROM THE PERSPECTIVE OF THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Monika Dumbrytė-Ožiūnienė

Mykolas Romeris University, Lithuania
monikadumbryte@gmail.com

Abstract

Purpose - article aims to analyse the case-law of the Supreme administrative court of Lithuania (hereinafter - Supreme administrative court) concerning claims of improper detention conditions from the perspective of Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - ECHR). Thus, this article provides an analysis of criteria applied by the European Court of Human Rights (hereinafter - ECtHR) for determining the existence of an infringement of article 3 of the ECHR, prohibiting torture and inhuman or degrading treatment and case-law of the Supreme administrative court concerning improper detention conditions in light of the case-law of ECtHR. Finally, the author of this article studies criteria for awarding effective remedy.

Design/methodology/approach - Analytic, systematic, generalisation, analogy and comparative methods are used in this article. Systematic and analytical methods are used to analyse the standards of sufficient detention conditions. Comparative and analogy methods are employed for distinguishing the similarities and differences between the practice of Lithuanian administrative courts and case-law of the ECtHR. Based on the generalisation method, conclusions are drawn.

Findings - While the Supreme administrative court extensively relies on the case-law of the ECtHR, usually such judicial review is of limited scope, concerning only infringements of national legal regulation and not infringements of the ECHR. Like the ECtHR, the Supreme administrative court constitutes an infringement on a case-by-case basis, taking into account the cumulative effect of detention conditions. In cases of an infringement, the Supreme administrative court may award monetary compensation or constitute that finding of infringement is in itself a just satisfaction. The Supreme administrative court considers a time the victim spent subjected to improper conditions, the entirety of infringements, the level of suffering, the intention for harm of the institution, the economic situation in the country relevant criteria for determining an effective remedy. The Supreme administrative court usually concludes that finding of an infringement is just satisfaction in cases of minor infringements.

Nevertheless, the case-law regarding lack of privacy using sanitary facilities is still not consistent as in some cases the Supreme administrative court awards monetary compensation while in other cases refuses to award monetary compensation considering that finding of an infringement is just satisfaction.

However, analysis of the jurisprudence of the ECtHR reveals that even though administrative courts of Lithuania find that detention conditions were not adequate and thus infringe rights protected by the ECHR or national law, remedies granted by the courts are not always sufficient. On some occasions, remedies granted by the ECtHR for the same infringements are far higher than those granted by national courts. The ECtHR stipulates that under the principle of subsidiarity states parties of the ECHR are primarily responsible for ensuring the ECHR rights. Nevertheless, institutions or national courts in case of an infringement of the ECHR should award a remedy, which would be

similar to one awarded by the ECtHR in a similar case. Nonetheless, the ECtHR already numerous times concluded that remedies granted by the Supreme administrative court are not sufficient. On the other hand, for the remedy itself, it is difficult to provide a clear standard, what could be considered an adequate award in an individual case.

Research limitations/implications - research is limited to the analysis of the jurisprudence of the Supreme administrative court and the ECtHR. Thus, the practice of other courts and bodies of other human rights treaties is not analysed. This research is not intended to be an in-depth analysis of Lithuanian legal regulation of detention conditions since the aim of this article is to examine jurisprudence of the Supreme administrative court from the perspective of the ECtHR case-law and provide analysis in what cases remedies granted by the Supreme administrative court are not sufficient.

Practical implications - the results of the research reveal the criteria applicable in the jurisprudence of the Supreme administrative court for finding infringement of article 3 of ECHR and standards for awarding effective remedy.

Originality/Value - researchers of the Law institute of Lithuania researched detention conditions (Bieliūnienė, 2014; Wolfgan, 2017; Sakalauskas, 2015). However, the research of the Law institute of Lithuania was limited to the national and international standards for conditions of detention. Thus, researchers did not analyse jurisprudence regarding the awards in cases of improper detention conditions. Since there is no research concerning the alignment between remedies granted by ECtHR and the Supreme administrative court, this article would be valuable for both legal practitioners and victims of infringement.

Keywords: detention conditions, torture, inhuman or degrading treatment or punishment, European Convention on Human Rights, subsidiarity, effective remedy, non-pecuniary damage, principle of subsidiarity.

Research type: general review.

Introduction

It is a universal concept that every detained person has a right to detention conditions which are in accordance not just with national law but international human rights law standards as well. The Supreme administrative court and the ECtHR numerous times expressed that every detained person must be treated in accordance with human rights law. For example, the ECtHR has highlighted on many occasions that every state has an obligation to ensure that detainees should be held in *"conditions that are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured*"[1].

National authorities have a responsibility to ensure effective compliance with the ECHR. Under the Law of administrative procedures of the Republic of Lithuania[2], administrative courts are responsible for hearing cases concerning damage caused by unlawful acts of public authorities, including improper detention conditions. Since *Valašinas v Lithuania*[3] - the first case against Lithuania, where the ECtHR found an infringement of article 3 due to improper conduct of authorities in detention facilities, the case-law of the Supreme administrative court has evolved. In *Valašinas v Lithuania* the ECtHR considered that Lithuanian legal system could not provide a sufficient remedy for a person who was subjected to improper conditions in

[1] *Kalashnikov v Russia* (App no 47095/99) ECHR 2003, 34.
[2] Law of administrative procedures of the Republic of Lithuania. Official Gazette. 1999, No. 13-308.
[3] *Valašinas v Lithuania* (App no 44558/98) ECHR 2001, 8.

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detention facilities. However, recent case-law of the ECtHR demonstrates that in principle administrative courts in Lithuania may effectively ensure compliance with the ECHR standards. Nonetheless, issues remain as on some occasions remedies granted by Lithuanian administrative courts are still considered as not satisfactory from the perspective of the ECHR.

From 2011 Lithuania continues to have the largest prisoner population in the European Union. In 2017 Lithuania had 235 prisoners per 100 000 population, which is several times higher number than the European Union average (Human rights monitoring institute, 2018). Correspondingly, the Supreme administrative court in its annual report indicated that nearly half of all the cases heard by the Supreme administrative court are related to the damage claims while most of them are related to inadequate detention conditions (Report of the Supreme administrative court, 2019).

While a lot of steps were taken to improve detention conditions since numerous infringements were found by the Supreme administrative court, detention conditions in Lithuania still raise concerns. In 2018 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – CPT) published a report concerning CPT visits to Lithuanian police establishments, prisons, psychiatric establishments, and social care establishments. CPT raised concerns[1] about partially screened in-cell toilets, limited access to shower[2], insufficient living space, inadequate ventilation (CPT report on its periodic visit to Lithuania, 2018). The Human rights committee also expressed concerns regarding overcrowding and poor living conditions in detention facilities, in particular concerning inadequate hygiene, nutrition, health services, limited time outside cells and overcrowded facilities (Concluding observations on the fourth periodic report of Lithuania to Human rights committee, 2018).

Therefore, it is evident that issues raised by improper detention conditions are still a significant issue for the Lithuanian legal system. Consequently, this article addresses relevant criteria for finding infringement of article 3 of the ECHR, prohibiting torture or inhuman and degrading treatment or punishment, and provides analysis of case law of both the ECtHR and the Supreme administrative court, concerning non-pecuniary damage claims arising out of improper detention conditions.

Prohibition of torture, inhuman or degrading treatment or punishment under the case-law of the ECtHR

Even though there is no formal hierarchy in the ECHR, right not be subjected to torture or inhuman or degrading treatment or punishment is given a privileged position because it is the second right in the list of all the rights protected by the ECHR (Schabas, 2017). Furthermore, the ECHR defines prohibition of torture or cruel, inhuman and degrading treatment in absolute terms, and no exceptions are allowed from the prohibition of torture or inhuman and degrading treatment or punishment (Rehman, 2010). What is more, derogations from article 3 of the ECHR cannot be made in time public emergencies[3].

Under article 3 of the ECHR, no one shall be subjected to torture or inhuman or degrading treatment or punishment. Linguistic analysis of this provision reveals that there are three different forms of treatment, which constitutes an infringement of article 3 of the ECHR:

[1] Only those problems raised by CPT, which are directly related to this article, are mentioned.
[2] Most of the detainees are allowed to use shower only once per week.
[3] Convention for the Protection of Human rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953). ETS5; 213 UNTS 221 (ECHR).

torture, inhuman treatment or punishment and degrading treatment or punishment. Although there is no need to make a clear distinction between the forms of ill-treatment, which constitute an infringement of article 3 of the ECHR, the boundary between these forms is relevant for the issue of compensation to the victim of an infringement (Harris, 2009).

The ECtHR clarified that ill-treatment must attain a minimum level of severity to fall within the scope of article 3 of the ECHR[1]. Under the case-law of the ECtHR, the assessment of the minimum level of severity is relative since it depends on all the circumstances of the case, subsequently the ECtHR takes into account following factors for the assessment of an infringement: duration of treatment, physical and mental effects of the treatment, sex, age and state of health of the victim[2]. The ECtHR specified that for evaluation if article 3 was infringed purpose and intention for the treatment should be considered[3]. Ill-treatment that attains such a minimum level of severity involves actual physical injury or intense physical or mental suffering[4].

The ECtHR distinguished inhuman and degrading treatment from torture, explaining that torture means deliberate inhuman treatment causing severe and cruel suffering. The ECtHR specified that ill-treatment should be considered as torture if deliberate treatment causes very serious and cruel suffering and highlighted that purpose of that treatment, as is defined in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture as an intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating[5]. The ECtHR in its case-law distinguished torture from inhuman treatment explaining that for finding that a person was subjected to inhuman treatment there is no need to find an intention to cause suffering[6] or suffering does not necessarily be inflicted in order it to be inhumane. However, the most crucial difference is the degree of suffering caused.

While in most of the cases distinction from torture and inhuman or degrading treatment is clear, the difference between inhuman and degrading treatment is less comprehensible. The ECtHR described the treatment as degrading if the object of this treatment is to humiliate and debase the detainee. Nevertheless, an absence of the purpose does not rule out a finding of a violation[7].

Recent case-law of the ECtHR demonstrates that most of the cases concerning insufficient detention conditions are considered as degrading[8] although in some cases the ECtHR may conclude that treatment is inhuman[9] or both inhuman and degrading[10]. Still, in some cases, the ECtHR does not specify if detention amounted to inhuman or degrading treatment and constitutes an infringement of article 3 of the ECHR[11].

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[1] *Ireland v. the United Kingdom* (App no 5310/71) ECHR 1978, 1.
[2] *Idalov v Russia* (App no 5826/03) ECHR 2012, 145.
[3] *Krastanov v. Bulgaria* (App no 50222/99) ECHR 30 September 2004.
[4] *Ireland v. the United Kingdom* (App no 5310/71) ECHR 1978, 1.
[5] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted on 10 December 1984, entered into force on 26 June 1987). United Nations, Treaty Series, vol. 1465; *Abu Zubaydah v. Poland* (App no 7511/13) ECHR 24 July 2014.
[6] *Ireland v. the United Kingdom* (App no 5310/71) ECHR 1978, 1.
[7] *Branduse v Romania* (App no 6568/03) ECHR 7 April 2009.
[8] *Peers v Greece* (App no 28524/95) ECHR 19 April 2001; *Kalashnikov v Russia* (App no 47095/99) ECHR 2003, 34.
[9] *Arutyunyan v Russia* (App no 48977/09) ECHR 10 January 2012.
[10] *Ananyev v Russia* (App no 42525/07 and 60800/08) ECHR 10 January 2012.
[11] *Modarca v. Moldova* (App no 14437/05) ECHR 10 May 2007.

When considering claims related to insufficient detention conditions, the ECtHR highlighted that detention of a person itself is related to suffering and humiliation. However, under article 3 of the ECHR "*to fall under Article 3, the suffering and humiliation involved must, in any event, go beyond that inevitable element of suffering and humiliation connected with detention*". Therefore, every state party has a responsibility to ensure that every detained person is detained in detention facilities which are compatible with human dignity, detainee's health is secured and he is not exposed to a hardship which exceeds the unavoidable level of suffering inherent to detention[1].

It is clear from the case-law of the ECtHR that it adopted a threshold approach rather than a clear rule-based test. The ECtHR evaluates the cumulative effect of detention conditions and assesses other circumstances such as duration of treatment, physical and mental effects of the treatment, sex, age, and state of health of the victim[2].

Nevertheless, recent judgment in *Muršić v Croatia* gave more clarity on prison overcrowding. The ECtHR elaborated that a strong presumption of a violation of article 3 of the ECHR arises when the personal space available to a detainee falls below 3 sq. m in multi-occupancy accommodation[3]. The ECtHR highlighted that this presumption is rebuttable by other cumulative effects of detention conditions, for example time and extent of restriction; freedom of movement and adequacy of out-of-cell activities; and the general appropriateness of the detention facility[4]. The ECtHR distinguished latter situation from others, where overcrowding is not so severe. The ECtHR explained that in cases where a prison cell, measuring in the range of 3 to 4 sq. m of personal space per inmate, a violation of article 3 of the ECHR might be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. The ECtHR also stated that infringement of article 3 of the ECHR might also be found in a case where a detainee has more than 4 sq. m of personal space in multi-occupancy accommodation, other aspects of physical conditions of detention referred may determine the existence of infringement[5]. While it is clear that the ECtHR considers that 3 sq. m allocated to a prisoner is not sufficient from the perspective of article 3 of the ECHR, other situations distinguished by the ECtHR in *Muršić v Croatia* are less clear since the ECtHR evaluates the cumulative effect of detention conditions. Therefore, there is a strong indication for national courts that they should find an infringement of article 3 of the ECHR when there less than 3 sq. m allocated to a prisoner. However, in other cases national court lacks guidance, which may later result in finding that national court did not award effective remedy.

In cases where treatment does not reach the threshold to fall under article 3 of the ECHR, the ECtHR may still find an infringement of other provisions of the ECHR. For example, the ECtHR in *Szafranski v Poland* declared that article 3 was not infringed. The ECtHR however, decided that article 8 of the ECHR, protecting the right to privacy, was infringed. In this case detainee for more than one year did not have privacy while using sanitary facilities. Nevertheless, the ECtHR emphasized that in all other aspects detention conditions were satisfactory[6].

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[1] *Ananyev v Russia* (App no 42525/07 and 60800/08) ECHR 10 January 2012.
[2] *Mironovas and others v Lithuania* (App no 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13) ECHR 8 December 2015.
[3] *Muršić v Croatia* (App no 7334/13) ECHR 20 October 2016.
[4] *Muršić v Croatia* (App no 7334/13) ECHR 20 October 2016.
[5] *Muršić v Croatia* (App no 7334/13) ECHR 20 October 2016.
[6] *Szafranski v Poland (*App no 17249/12) ECHR, 15 December 2015.

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Liability for the damage caused by unlawful actions of institutions of public authority regarding improper detention conditions under the case-law of the Supreme administrative court

The ECtHR detailed that states parties have a margin of appreciation in determining how they fulfil obligations, arising out of the ECHR concerning detention conditions. Nevertheless, the ECtHR highlighted that the chosen standard must follow standards of human dignity[1].

Article 17 of the Law on Administrative Proceedings of the Republic of Lithuania stipulates that administrative courts have jurisdiction to adjudicate in cases concerning liability for damage caused by unlawful actions of institutions of public authority. Under article 6.271 of the Civil code of the Republic of Lithuania damage caused by unlawful acts of institutions of public authority must be compensated by the state from the state budget, irrespective of the fault of a concrete public servant or other employees of public authority institutions[2].

Liability arises under three conditions: unlawful acts (omissions), damage and causal relationship between unlawful acts (omissions) and damage. According to Article 6.250 of the Civil Code, non-pecuniary damage is a person's physical pain, spiritual survival, inconvenience, spiritual shock, emotional depression, humiliation, deterioration of reputation, loss of communication capability, and other consideration by the court in money.

Under article 21 of Constitution of the Republic of Lithuania, human dignity shall be protected by law. It is prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments[3]. The primary legal sources that regulate detention conditions are Law on custody execution of the Republic of Lithuania and Code for the execution of sentences of the Republic of Lithuania. There are also many delegated legislation which set specific standards for detention conditions, for example - hygiene norms, which set specific standards for ventilation, heating, lighting measurements of space which should be allocated to every detainee.

Nevertheless, detention institutions are also bound by international human rights standards, setting standards for detention conditions. The Supreme administrative court directly applies article 3 of the ECHR in its case-law and bases its decisions on the arguments made by the ECtHR (Jočienė, 2012). The Supreme administrative court emphasized that the ECHR is an integral part of the Lithuanian legal system, and its violation can be found not only by the ECtHR but also by Lithuanian courts. Thus, a violation of the ECHR by the authorities of state may also serve as a basis for state civil liability, because unlawful conduct within the meaning of article 6.271 may occur not only in violation of national legislation but also in violation of international law[4].

It is evidenced from the abundant case-law of the Supreme administrative court that liability for damage caused by unlawful actions of institutions of public authority for improper detention conditions usually arises if the Supreme administrative court constitutes an infringement of national legal regulation[5]. The Supreme administrative court made a

[1] *Aleksanyan v Russia* (App no 46468/06) ECHR 22 December 2008; *Vasyukov v. Russia* (App no 2974/05) ECHR 5 April 2011.
[2] Civil code of the Republic of Lithuania. *Official Gazette*. 2000, No. 74-2262.
[3] Constitution of the Republic of Lithuania. *Official Gazette*. 1992, No. 220-0.
[4] *G. G. v Šiauliai remand prison* (case No. A[444]-619/2008) Supreme administrative court 16 April 2008.
[5] *O. K. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A[822]-1500/2013) Supreme administrative court, 7 November 2013; *L. B. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A[822]-1477/2013) Supreme administrative court

distinction between cases where it found infringement of national legal regulation and infringement of both national legal regulation and the ECHR. The Supreme administrative court explained that refusal to apply article 3 of the ECHR does not eliminate responsibility of authorities because article 3 of the ECHR is applicable when there is a cumulative effect of various infringements. The court also specified that under national law, there is no requirement for a cumulative effect of infringements for liability to arise and mere infringement of a single national norm is sufficient to constitute that authorities are liable under the Civil Code of the Republic of Lithuania for improper detention conditions[1].

It should be noted, that even though the national court does not explicitly find an infringement of article 3 of the ECHR, the ECtHR may still consider that argumentation of national court is sufficient. For example, in *Mironovas and others v Lithuania* the ECtHR elaborated that the applicant retains the status of a victim if a national court does not find an infringement of the ECHR and does not award sufficient redress. On the other hand, in the same judgment the ECtHR explained that even though national court explicitly did not find an infringement of article 3 and restricted itself to a finding of a breach only of domestic law, finding of the Supreme administrative court in substance was so close to a finding of an Article 3 violation that the ECtHR accepted it as sufficient[2].

The Supreme administrative court usually finds an infringement due to overcrowded facilities in conjunction with other infringements such as inadequate ventilation, lighting, and sanitary facilities. It is seen from the case-law of the Supreme administrative court that the cumulative effect of detention conditions is evaluated[3].

When determining if detention facilities were overcrowded, the Supreme administrative court evaluates national legal regulation, which establishes specific measurements, which must be allocated to every detainee, depending on detention facility, on condition that national legal regulation is consistent with the case-law of the ECtHR[4]. However, even though under the case-law of the ECtHR sanitary facilities should be excluded from living space allocated to a detainee, the Supreme administrative court explained that under national legal regulation there is no requirement to exclude space occupied by sanitary facilities[5].

Furthermore, case-law reveals that the Supreme administrative court considers that in cases where an applicant was not subjected to overcrowded detention facilities, and only was not able to use sanitary facilities privately, it finds that a right to privacy was infringed.

Effective remedies for victims of improper detention conditions

The ECtHR reiterates that infringement of article 3 can be remedied in two ways. The ECtHR highlighted that in cases where a person is still detained, the most effective remedy is the termination of an infringement. In connection with this remedy, the ECtHR stated that under Lithuanian law transfer of detainees to another detention facility is discretionary and is

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24 October 2013; *R. K. v State of the Republic of Lithuania, represented by Kaunas remand prison* (case No. A143-2810/2011) Supreme administrative court 3 November 2011.

[1] *V. K. v State of the Republic of Lithuania, represented by Klaipėdos city police headquarter* (case No. A-1517-143/2016) Supreme administrative court 4 October 2016.

[2] *Mironovas and others v Lithuania* (App no 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13) ECHR 8 December 2015.

[3] *T. Č. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-1765-556/2016) Supreme administrative court 8 November 2016.

[4] *D. A. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-3124-756/2019) Supreme administrative court 27 March 2019.

[5] *K. Ž. v State of the Republic of Lithuania, represented by Vilnius correction home* (case No. A-1672-261/2019) Supreme administrative court 27 March 2019.

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not practical in cases of insufficient detention conditions. Furthermore, the ECtHR noted that requests to improve detention conditions might not be successful due to financial difficulties. The ECtHR also emphasized that even though the request to be transferred to another facility would be granted, detention conditions would be improved at the expense of another detained person[1].

However, in situations where a person is no longer detained, monetary compensation is one of the forms of redress. The ECtHR holds that in case if detention conditions are so deplorable that it amounts to the infringement of article 3, it cannot be compensated by a mere finding of a violation, so the victim should be awarded monetary compensation. Therefore, national court should provide compelling reasons for not granting monetary compensation or award lower compensation[2].

Under the principle of subsidiarity, authorities of states parties have the primary responsibility to ensure compliance with the ECHR (Interlaken follow-up. Principle of subsidiarity, note by the jurisconsult). Therefore, the ECtHR should intervene just in these cases where national authorities failed in that task (Caligiuri, Napoletano, 2011). Article 13 of the ECHR guarantees the availability at a national level a remedy to enforce the substance of the ECHR rights and freedoms. Under this article, a domestic remedy should deal with the substance of an arguable complaint under the ECHR and grant appropriate relief, which is effective both in law and in practice[3]. The ECtHR elaborated that domestic remedy in respect of conditions of detention may be considered as effective if national court deals with a case under the relevant principles established in the case-law of the ECtHR and awards compensation which is comparable to those awarded by the ECtHR in similar situations[4].

The ECtHR on many occasions came to a conclusion that even though Lithuanian administrative courts found infringement and granted monetary compensation for the damage suffered, the remedy was not sufficient, thus the applicant retained the status of a victim. In the most recent case, *Miliukas v Lithuania* the ECtHR elaborated that the Supreme administrative court found an infringement of both national law and the ECHR and awarded 579 Eur, however "[...] *this amount, whilst apparently consistent with Lithuanian case-law at that time, is significantly lower than the amounts the Court awards in similar cases*"[5].

The ECtHR does not provide specific criteria for adequate compensation. Nevertheless, on many occasions, the ECtHR took into account time spent in improper detention conditions as the crucial factor for determining just satisfaction[6].

Under the case-law of the Supreme administrative court, the applicant must provide a comprehensive description of detention conditions. If applicant's complaints are not consistent, detailed or respondent provides evidence, which negates applicant's claims, the Supreme administrative court considers that infringement was not substantiated[7]. However, after the applicant provides a detailed description of detention conditions, the burden of proof shifts to the respondent. The respondent then must provide all relevant documents

[1] *Mironovas and others v Lithuania* (App no 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13) ECHR 8 December 2015.
[2] *Ananyev v Russia* (App no 42525/07 and 60800) ECHR 10 January 2012.
[3] *M.S.S. v. Belgium and Greece (App no* 30696/09) ECHR 2011, 108.
[4] *Scordino v. Italy (*App no 36813/97) ECHR 29 July 2004.
[5] *Miliukas v Lithuania* (App no 10992/14) ECHR 16 April 2019.
[6] *Ananyev v Russia* (App no 42525/07 and 60800/08) ECHR 10 January 2012; *Torreggiani and others v Italy* (App no 43517/09) ECHR, 8 January 2013.
[7] *R. T. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-2481-624/2016) Supreme administrative court 8 March 2016.

concerning the applicant's detention conditions[1]. Once an infringement has been proved, the applicant is not obliged to provide evidence demonstrating that he or she suffered because of the infringement since suffering is presumed[2].

Under the case-law of the Supreme administrative court, administrative courts must also evaluate economic situation of the state, intent of a defendant to treat applicant inhumanely, and effects of a treatment to applicant's health[3], type of detention facility, nature and intensity of the infringement, case law of the Supreme administrative court in similar cases, general principles of law[4], as well as time spent in improper detention conditions[5].

While some of the above-mentioned criteria, namely, type of the detention facility, nature, and intensity of the infringement, consistency of the case law, general principles of law, time spent in improper detention conditions, do not raise concerns from the perspective of the ECHR, other criteria are problematic.

First of all, it is somewhat unclear from the case-law of the Supreme administrative court if criteria such as effects to applicant's health or a lack of intent to treat applicant inhumanely, could be considered as relevant criteria at all, which mitigate the damage suffered or just demonstrate that there is no basis for considering a particular case as extraordinary and accordingly awarding more significant monetary compensation than in other cases. Under the case-law of the ECtHR, intention to subject the person to conditions which amount to the infringement of article 3 of the ECHR may result in finding that person suffered torture. Nevertheless, even in the context of detention conditions the ECtHR emphasizes that in that particular case there is no evidence that victim was subjected to improper detention conditions on purpose. However, it does not eliminate finding that detention conditions amount to the infringement of article 3 of the ECHR[6]. Therefore, it is clear that intention or purpose of treatment is relevant for finding an infringement of article 3 of the ECHR but not for assessment for just satisfaction. Furthermore, under the case-law of the ECtHR circumstance that violation of article 3 of the ECHR does not result in a long-term health problems, does not preclude the ECtHR from finding that infringement occurred. What is more, long-term health problems may even lead to a conclusion that victim should be awarded far higher monetary compensation or may raise the issue of pecuniary damage.

The Supreme administrative court extensively relies on the economic situation of the state. Judge Danutė Jočienė in her partly dissenting opinion in *Kasperovičius v Lithuania* expressed support for this criterion, claiming that that the ECtHR should take into account economic situation or standard of living in the country. The judge highlighted that the ECtHR awarded monetary compensation for treatment which lasted for seven days yet equals to twelve months' average salary in Lithuania. Recently the ECtHR acknowledged that the economic situation of the country is also relevant. However, this conclusion was made in a case against Italy, which introduced other measures to remedy detainees who suffered an infringement of article 3 of the ECHR such as reducing the sentence for victims of an

[1] *T. Č. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A442-1251/2013) Supreme administrative court 23 September 2013.
[2] *D. S. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-1714-492/2019) Supreme administrative court 27 March 2019.
[3] *A. Š. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-683-624/2019) Supreme administrative court 10 April 2019.
[4] *I. Š. v State of the Republic of Lithuania, represented by Alytus city police headquarters* (case No. A-621-756/2017) Supreme administrative court 19 April 2017.
[5] *A. Š. v State of the Republic of Lithuania, represented by Pravieniškės colony* (case No. A-1460-602/2019) Supreme administrative court 27 March 2019.
[6] *Kasperovičius v Lithuania* (App no 54872/08) ECHR 20 November 2012.

infringement of article 3 of the ECHR[1]. Therefore, this line of argumentation might not be appropriate in Lithuanian cases since the only other remedy available to detainees is just satisfaction awarded by administrative courts.

The Supreme administrative court considers that monetary compensation for improper detention conditions should not be awarded if an infringement is a minor, short-term, one-time infringement[2]. For example, the Supreme administrative court did not award monetary compensation when the right to privacy was not ensured while using sanitary facilities[3]; right to privacy while taking a shower was infringed[4]; applicant's right to proper feeding was infringed[5]. Nonetheless, it should be taken into account that on many occasions the Supreme administrative court also ruled that infringement of a right to privacy while using sanitary facilities, may not be compensated by the mere constitution of infringement and victim should be compensated by monetary compensation[6].

Furthermore, the Supreme administrative court in its case-law relies on the ECtHR jurisprudence[7], namely *Daktaras v Lithuania*[8] and *L. L. v France*[9], to substantiate its position that finding of infringement might be just satisfaction. Even though the ECtHR considers that on some occasions finding an infringement might be sufficient just satisfaction, it noted that in cases of infringement of article 3 of the ECHR finding of infringement may not be sufficient and the national court should provide compelling reasons to substantiate that remedy. Furthermore, it should be taken into account that *Daktaras v Lithuania* concerned infringement of article 6 of the ECHR while *L. L. v France* concerned infringement regarding custody issues. Thus, even though finding of an infringement may be just satisfaction in some cases, the Supreme administrative court's argumentation based on the ECtHR case law may not be convincing.

Conclusions

1. The ECtHR constitutes an infringement on a case-by-case basis, taking into account the cumulative effect of detention conditions. While the threshold approach adopted by the ECtHR is flexible and provides article 3 with a wide scope, it also lacks clarity, since it is not based on a clear

[1] *Scordino v. Italy (*App no 36813/97) ECHR 29 July 2004.
[2] *J. D. v State of the Republic of Lithuania, represented by Šiauliai remand prison* (case No. A-1279-492/2018) Supreme administrative court 9 May 2018.
[3] *J. J. v state of the Republic of Lithuania, represented by Šiauliai remand prison* (case No. A-2061-438/2019) Supreme administrative court 27 March 2019; *S. K. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-1386-261/2019) Supreme administrative court 21 February 2019.
[4] *J. S. v State of the Republic of Lithuania, represented by Vilnius correction home* (case No. A-1396-602/2019) Supreme administrative court 27 March 2019.
[5] *E. M. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-2298-629/2019) Supreme administrative court 27 March 2019.
[6] *E. S. v state of the Republic of Lithuania, represented by Šiauliai remand prison* (case No. A-895-442/2019) Supreme administrative court 27 March 2019; *M. M. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-3500-525/2019) Supreme administrative court 6 March 2019.
[7] *J. S. v State of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-163-552/2019) Supreme administrative court 27 March 2019; *G. D. v state of the Republic of Lithuania, represented by Lukiškės remand prison and prison* (case No. A-1652-575/2019) Supreme administrative court 20 March 2019; *V. V. v State of the Republic of Lithuania, represented by Šiauliai remand prison and prison* (case No. A-1768-525/2018) Supreme administrative court 26 September 2018; *L. Ž. v State of the Republic of Lithuania, represented by Telšiai city police headquarters* (case No. A-3285-520/2016) Supreme administrative court 2 November 2016.
[8] *Daktaras v Lithuania* (App no 42095/98) ECHR 10 October 2000.
[9] *L. L. v France* (App no 7508/02) ECHR 10 October 2006.

rule-based approach. Such an approach is problematic since national courts are not given sufficient guidance and maybe the reason why Lithuanian administrative courts while extensively relying on the case-law of the ECtHR, usually find that only national legal regulation was infringed and do not constitute an infringement of the ECHR.

2. While Lithuanian administrative courts generally successfully apply the criteria set by the ECtHR regarding violations of article 3 of the ECHR, the ECtHR does not always consider remedies granted by the courts as sufficient. While this is an outstanding issue for national courts, there are no straightforward solutions for it, since the ECtHR declines to provide any clear criteria for determining if a remedy is effective. Thus, national courts are left with only one option – to recourse to the case-law of the ECtHR and evaluate whether a particular remedy would be in line with the one granted by the ECtHR in similar circumstances. Comparison of the case-law of the ECtHR gives rise to the argument that time spent in improper detention conditions is usually a dominant factor for determining just satisfaction.

3. The Supreme administrative court applies a more elaborate criteria for effective remedy, such as time the victim spent subjected to improper conditions, the entirety of infringements, the level of suffering, the intention for harm of the institution, the economic situation. The Supreme administrative court also considers that finding an infringement is just satisfaction if infringement is minor. These criteria fill the void left by the ECtHR and provide much-needed guidance to national courts. Whether or not they result in an effective remedy is yet to be seen as there are still inconsistencies, for example – in cases when detention facilities fail to ensure privacy.

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